

Oversight Division

Committee On Legislative Research

PROGRAM EVALUATION
Office of Administration's
Division of Purchasing
and Materials Management

Program Evaluation
Office of Administration's
Division of Purchasing
and Materials Management

*Prepared for the Committee on Legislative Research
by the Oversight Division*

Mickey Wilson, CPA, Director

*Review Team: Kimberly Reardon, Team Leader, Linda Dudgeon, Greg Beeks, Helen
Webster-Cox, CPA*

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Committee on Legislative Research Oversight Subcommittee

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**COMMITTEE ON LEGISLATIVE RESEARCH
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May 7, 2003

Members of the General Assembly:

The Joint Committee on Legislative Research adopted a resolution in May, 2002, directing the Oversight Division to perform a program evaluation of the bidding policies and procedures of the Office of Administration's Division of Purchasing and Materials Management to determine and evaluate program performance in accordance with program objectives, responsibilities, and duties as set forth by statute or regulation.

The accompanying report includes Oversight's comments on internal controls, compliance with legal requirements, management practices, program performance and related areas. We hope this information is helpful and can be used in a constructive manner for the betterment of the state program to which it relates.

Respectfully,

A handwritten signature in cursive script that reads "Catherine L. Hanaway".

Representative Catherine Hanaway
Chairman

EXECUTIVE SUMMARY

The Division of Purchasing and Materials Management (DPMM), within the Office of Administration, is responsible for the procurement of all state-required supplies, materials, equipment and professional or general services except for those agencies exempted by law. In addition to the original authority given to the DPMM in Section 34.050, RSMo, 1939, the DPMM is also responsible for the following activities: administration of the state and federal surplus property program; operation of the cooperative procurement program for political subdivisions of the state; and coordination of the state recycling program. For fiscal year 2003, the General Assembly authorized an appropriation, from the General Revenue fund, of \$1,889,469 (not to exceed 44 FTE) for the DPMM. As of June 30, 2002, the DPMM had 42 FTE.

DPMM's selection of newspapers, for advertising bids, does not meet the legislative intent of Sections 34.040.2(1) and 34.044.2, RSMo. Oversight believes the DPMM is falling short on both elements of statutory language – newspapers of general circulation and such places most likely to reach prospective bidders. The DPMM achieves spending a surprisingly small amount annually (\$9,600) by advertising in obscure publications such as the St. Louis Daily Record and The Daily Record, which are considered as “legal” newspapers with a combined estimated readership of 4,500 people per day. DPMM believes their manner of advertising bid opportunities achieves the desired competition level; however, Oversight believes their manner of advertising in newspapers is an ineffective use of taxpayer's money and should be either improved upon or discontinued.

The DPMM is exempting the Department of Transportation and certain state colleges and universities from the State Purchasing Law contrary to statute and legal opinions rendered to date. While the DPMM correctly acknowledges the Department of Transportation's (DHT) authority to independently procure supplies directly incident to the construction of state highways, the DPMM has allowed the DHT to expand this authority to all supplies, equipment, and services (except for printing, binding, and information technology related purchases). In Oversight's opinion, the DPMM has exempted the DHT out of desire to maintain the status quo. At least since 1981, the DPMM, while knowing the DHT has overstepped their procurement authority by law, has allowed them to continue to do so without question. In Oversight's opinion, the DPMM has exempted certain state colleges and universities based on misinformation. The DPMM explained their basis for exempting state colleges and universities depends if the college or university is a land-grant institution with a statewide mission. Oversight's review of statutes and Attorney General's Opinions does not support DPMM's methodology.

The DPMM needs to enhance its policies and procedures regarding one-time and special delegations of authority. Oversight's review of these delegations revealed, in some instances, supporting information was absent or inadequate, original approval and renewal authority documentation was not retained, and expenditures made on behalf of these delegations were not

monitored by the DPMM.

The DPMM has not transferred excess revenues over costs of the State Recycling Program to the Department of Social Services' Heating Assistance Program, as required by Section 34.032.5, RSMo, since fiscal year 1998. As of July 1, 2001, the balance in the recycling fund was \$36,824 and as of July 3, 2002, the balance in the fund was \$40,312. Excess revenues over costs of the recycling program have been retained in the fund with no transfers made to DOS since the last transfer of \$15,000 in fiscal year 1998.

The Oversight Division wishes to acknowledge the cooperation and assistance of staff of the Division of Purchasing and Materials Management during the evaluation process.

A handwritten signature in black ink, reading "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA
Director

Chapter One - Introduction

The Joint Committee on Legislative Research directed the Oversight Division to conduct a program evaluation of the bidding policies and procedures of the Office of Administration's Division of Purchasing and Materials Management.

Background

The Division of Purchasing and Materials Management (DPMM), within the Office of Administration, is responsible for the procurement of all state-required supplies, materials, equipment and professional or general services except for those agencies exempted by law. In addition to the original authority given to the DPMM in Section 34.050, RSMo, 1939, the DPMM is also responsible for the following activities: administration of the state and federal surplus property program; operation of the cooperative procurement program for political subdivisions of the state; and coordination of the state recycling program. For fiscal year 2003, the General Assembly authorized an appropriation, from the General Revenue fund, of \$1,889,469 (not to exceed 44 FTE) for the DPMM. As of June 30, 2002, the DPMM had 42 FTE.

The Division's mission is "to perform comprehensive procurement and materials management services for state agencies and other eligible entities in an efficient and effective manner and to provide assistance to our customers in fulfillment of their missions while maintaining the public trust and maximizing the use of public funds." In accordance with applicable statutes, the DPMM procures goods and services by awarding contracts using the "lowest and best" evaluation method. The DPMM assigns delegation of authority to state agencies governed by Chapter 34 RSMo for purchases less than \$25,000. In May 2000, the DPMM implemented online bidding and as of June 7, 2002, there were 4,392 online registered vendors.

Prior to fiscal year 2000, the DPMM used the information system known as the Missouri Automated Procurement System (MAPS). Along with other state agencies in fiscal year 2000, the DPMM converted from MAPS to the Statewide Accounting Management system (SAM II). During March to April 1999, the SAM II Transition Team loaded all active contracts from MAPS into SAM II. At the onset of fiscal year 2003, with three years of SAM II data available (fiscal years 2000 to 2002), the DPMM decided to close out the MAPS data files.

Objectives

The primary focus of the evaluation is to provide the General Assembly with information regarding how the Division of Purchasing and Materials Management (DPMM) procures goods and services on behalf of the state. Specifically, Oversight staff concentrated on five primary objectives:

- To gain an understanding of DPMM.
- To determine if DPMM is complying with applicable state and federal laws, regulations, and internal policies and procedures.
- To determine if DPMM's current practices in the area of delegating purchase authority to state agencies are proper.
- To examine the satisfaction of state agencies in their dealings with DPMM.
- To identify and recommend best practices, relating to procurement, which the DPMM is not currently practicing.

Scope/Methodology

The scope of the evaluation included reviewing for compliance with nearly each provision of Chapter 34 RSMo, for the period July 1, 1999, through June 30, 2002. The methodology used by the Oversight Division included tests of samples of bids and contracts, using the internet to draw comparisons of DPMM to other states' procurement practices, and reviewing Missouri statutes, regulations, and internal policies and procedures to the extent necessary to fulfill audit objectives. A primary method used to measure objectives involved conducting personal interviews with agency personnel. In addition, Oversight conducted a written survey of state agencies regarding their experiences with the DPMM. The DPMM cooperated fully with providing information as requested.

Chapter Two - Comments

Comment #1

DPMM has not fully implemented a recommendation from a previous Oversight Report.

In Oversight's report titled "Community Initiatives," dated January 30, 2002, a recommendation was made to the DPMM to "revise the Terms and Conditions section for Request for Proposals (RFPs) to include language that requires offerors to submit proof that they are in good standing with the Secretary of State's Office and properly registered with the Department of Revenue and the Division of Employment Security."

The DPMM created a standard wording for buyers to use when writing bids which states "...the offeror shall provide documentation of compliance upon request..." According to DPMM staff, the frequency of requesting documentation is on a spot-check basis.

According to Oversight's previous recommendation, the DPMM should have revised its Terms and Conditions to include language that requires offerors to submit proof that they are in good standing with the Secretary of State's Office and properly registered with the Department of Revenue and the Division of Employment Security. If the DPMM doesn't want to revise its Terms and Conditions, then they should consider making the suggested language a bid requirement.

The Director of DPMM said his staff did not revise the Terms and Conditions (T&C) because it does not become part of the binding agreement. The Director also said they chose not to make the language mandatory because the volume of paperwork could be problematic and not justified because of the rareness of finding a bidder who is not registered with the state (basic costs outweigh the benefits sentiment).

While Oversight cannot quantify or estimate the number of vendors which are not properly registered with the state and

not paying Missouri taxes, the potential for DPMM to contract with them exists. Oversight's recommendation, if implemented, would provide an up-front opportunity to detect and prevent employers from avoiding franchise tax, unemployment tax, and withholding tax.

Recommendation

Oversight recommends the DPMM incorporate language that requires offerors to submit proof, as part of their bid, that they are in good standing with the Secretary of State's Office and properly registered with the Department of Revenue and the Division of Employment Security as a bid requirement or included in the various forms of Terms and Conditions.

If the DPMM believes the above recommendation will undesirably increase the amount of paperwork received, then Oversight recommends the DPMM require buyers to verify and document that each potential awardee is in good standing with the Secretary of State's Office and properly registered with the Department of Revenue and the Division of Employment Security.

Specifically, Oversight recommends the DPMM do the following before an award is made:

- Use the Secretary of State's website to determine if the offeror is in good standing;
- Request the offeror to submit a "Notice of Liability" letter, a rate statement, or a contribution of wage report from the Division of Employment Security; and
- On a quarterly basis, submit the current vendor list to the Department of Revenue (DOR) and request the DOR run an exceptions report listing those vendors that are not registered with the DOR. If vendors are being considered for an award, that are not on the vendor list, DPMM should require proof of proper registration prior to awarding contracts.

Comment #2

The DPMM is exempting the Department of Transportation and certain state colleges and universities from the State Purchasing Law (Chapter 34 RSMo) contrary to statute and legal opinions rendered to date.

The Department of Transportation and certain state colleges and universities are procuring supplies, equipment, and services independent of the DPMM contrary to statute.

While the DPMM correctly acknowledges the Department of Transportation's (DHT) authority to independently procure supplies directly incident to the construction of state highways, the DPMM has allowed the DHT to expand this authority to all supplies, equipment, and services (except for printing, binding, and information technology related purchases).

According to an Attorney General's (AG's) Opinion Letter, dated February 4, 1947, all supplies and materials, including printing and binding, which are not to be used directly by the DHT for the actual construction and maintenance of state highways, but which are merely incidental to the operation of the department, are to be acquired through the DPMM.

In Oversight's opinion, the DPMM has exempted the DHT out of desire to maintain the status quo. At least since 1981, the DPMM, while knowing the DHT has overstepped their procurement authority by law, has allowed them to continue to do so without question.

The DPMM considers Central Missouri State University, Lincoln University, Linn State Technical College, Southwest Missouri State University, Truman State University and the University of Missouri to be exempt from Chapter 34, RSMo; however, research of AG's Opinions suggests only Lincoln University and the University of Missouri are exempt from Chapter 34.

Oversight notes the statutory language for Truman State University is similar to the statutory language of Lincoln University and the University of Missouri upon which the AG's Opinion Letter No. 7, which deemed those universities exempt from Chapter 34, is based. However, given the absence to the contrary in AG's Opinions, Central Missouri State University, Linn State Technical College, Southwest Missouri State University, and Truman State University should be required to follow Chapter 34.

In Oversight's opinion, the DPMM has exempted certain state colleges and universities based on misinformation. The DPMM explained their basis for exempting state colleges and universities depends if the college or university is a land-grant institution with a statewide mission. Oversight's review of statutes and AG's Opinions does not support DPMM's methodology.

The State Purchasing Law was created for the purpose of maximizing efficiency and economy through the use of a centralized purchasing agency. Aside from not complying with state statute, incorrectly exempting agencies from Chapter 34 promotes decentralized purchasing which could cause duplication of staff efforts and a diffused concentration of buying power.

Recommendation

Oversight recommends the DPMM submit a list of state colleges and universities, excluding Lincoln University and the University of Missouri, to the Attorney General and request an opinion to clarify which institutions are exempt from Chapter 34 RSMo.

Oversight recommends the DPMM reclaim their responsibility to be the purchasing agent for the Department of Transportation for all supplies, equipment, and services which are not directly incidental to the construction of state highways.

Comment #3

DPMM's selection of newspapers, for advertising bids, does not meet the legislative intent of Sections 34.040.2(1) and 34.044.2, RSMo.

The DPMM follows an internal procedure which directs the advertising coordinator to email advertisements, for bids with an estimated expenditure of \$25,000 or over, to the St. Louis Daily Record and The Daily Record (a Kansas City-based newspaper). DPMM's internal procedure also requires the advertising coordinator to fax advertisements on a rotational basis (among six newspapers) to one minority newspaper in St. Louis and one minority newspaper in Kansas City. The St. Louis Daily Record and The Daily Record are marketed primarily to attorneys and are considered to be "legal" newspapers with a combined estimated readership of 4,500 people per day. For example,

a bid for building supplies in the Jefferson City area was advertised in the St. Louis Daily Record, The Daily Record, and The Call (a Kansas City minority newspaper). According to the DPMM's Director, the DPMM is spending an average of \$9,600 per year for advertising bids.

Section 34.040.2(1), RSMo, states, "on any purchase where the estimated expenditure shall be twenty-five thousand dollars or over, except as provided in subsection 5 of this section, the commissioner of administration shall advertise for bids in at least two daily newspapers of general circulation in such places as are most likely to reach prospective bidders and may advertise in at least two weekly minority newspapers and may provide such information through an electronic medium available to the general public at least five days before bids for such purchases are to be opened."

DPMM's advertising procedure should include selecting newspapers relative to the geographical area(s) associated with the bid. For example, the statutory language "in at least two daily newspapers of general circulation in such places as are most likely to reach prospective bidders," for a bid for building supplies in the Jefferson City area, would suggest advertising in the Jefferson City News Tribune and the Columbia Daily Tribune.

Only 68% of the state agencies that responded to Oversight's survey indicated they were aware the DPMM uses the St. Louis Daily Record and The Daily Record to advertise bids. Moreover, 21% of the state agencies that responded to Oversight's survey indicated DPMM's use of advertising in the St. Louis Daily Record and The Daily Record does not adequately reach prospective bidders. One state agency commented that advertising in the St. Louis Daily Record and The Daily Record does not reach Springfield, Jefferson City, Columbia, and Cape Girardeau. Two state agencies similarly commented they were not aware of any bidder bidding because they had seen the ad in the St. Louis Daily Record and The Daily Record. One state agency commented the St. Louis Daily Record and The Daily Record don't reach their target audience for most of the services they purchase.

Oversight assumes competition could be increased if bids were advertised in newspapers of general circulation in such places as are most likely to reach prospective bidders. Increased competition should theoretically lead to better value when awarding contracts.

Oversight believes the DPMM is falling short on both elements of the statutory language – newspapers of general circulation and such places most like to reach prospective bidders (addressed above). Oversight deems “general circulation” to mean a greater circulation than those of the St. Louis Daily Record and The Daily Record especially when the cities of St. Louis and Kansas City are the target audience. Oversight considers newspapers such as the St. Louis Post Dispatch and the Kansas City Star come closer to meeting the legislative intent of the statute.

The DPMM's average, annual advertising expense of \$9,600 may sound like a bargain; however, if potential bidders are not seeing the ads, the \$9,600 expense could be an ineffective use of taxpayer's money.

Recommendation

Oversight recommends the DPMM revise their internal procedure, regarding advertising, to include advertising for bids in at least two daily newspapers of general circulation in such places as are most likely to reach prospective bidders. Oversight recommends the DPMM consider including a procedure to select newspapers relative to the geographical area(s) associated with each bid.

Comment #4

The DPMM is unable to produce complete data regarding single feasible source, special delegations of authority, and emergency purchases.

Single feasible source, special delegations of authority, and emergency purchases require the state agency making the purchase to enter a code or reference number in all applicable SAM II purchase order documents. Some state agencies, DPMM included, are not consistently entering the proper coding which causes the data for these purchase types to be understated and incomplete.

DPMM's inability to produce complete information about single feasible source, special delegations of authority, and emergency purchases caused the scope of Oversight's

review to be limited. Not having access to all records rendered Oversight's decision-making about materiality difficult during the evaluation. Furthermore, the DPMM's inability to produce accurate and complete information indicates an internal control weakness which could suggest decision-making based on poor information.

Specifically, because of incomplete information, Oversight was unable to:

- ▶ determine an accurate count of single feasible source contracts;
- ▶ determine the total amount of purchases expended under special delegations of authority; and
- ▶ obtain an accurate SAM II report of emergency procurements for the evaluation period.

Recommendation

Oversight recommends the DPMM more strictly enforce their policy on proper SAM II purchase order document coding with state agencies by emphasizing the importance of reliable reporting.

Comment #5

The Department of Transportation (DHT) entered into a \$60,000 computer upgrade/maintenance contract with the American Association of State Highway and Transportation Officials (AASHTO) without obtaining approval from the Division of Purchasing and Materials Management (DPMM).

DPMM approved the purchase of computer software manufactured by the American Association of State Highway and Transportation Officials (AASHTO) several years ago for the Department of Transportation (DHT). DHT entered into an upgrade/maintenance agreement with AASHTO for fiscal year 2002, at a cost of \$60,000, without first obtaining DPMM's approval for the purchase. The AASHTO computer software is considered a Single Feasible Source (SFS) and the upgrades/maintenance contracts must be purchased from AASHTO. SFS purchases valued at \$25,000 or more are excluded from the authority granted to agencies under local delegations of authority and are to be administered by the DPMM. DHT reported their personnel assumed since DPMM approved the initial purchase of the AASHTO software, approval by DPMM for upgrades/maintenance contracts was not necessary.

The DHT's \$60,000 contract with AASHTO is out of compliance with Section 34.044, RSMo, regarding Single Feasible Source purchases. According to DPMM's policies and procedures, any department with a single feasible source valued at \$25,000 or more, must submit a requisition to DPMM for all SFS procurements. For DPMM to maintain proper oversight and control of SFS purchases and purchases exceeding \$25,000, all contracts meeting these criteria must be approved by DPMM. Moreover, Section 34.044, RSMo, requires SFS purchases exceeding \$25,000 to be advertised.

Recommendation

Oversight recommends the Department of Transportation submit all potential Single Feasible Source procurements (excluding those directly related to the construction of highways) valued at \$25,000 or more to DPMM for approval, prior to entering into binding agreements.

Comment #6

The DPMM does not have sufficient documentation to show the proper submission of requests and approvals for Special Delegations of Authority.

According to the SAM II operating manual, a department should submit a written request and supporting documentation to justify the need for a Special Delegation of Authority (SDA). A review of the DPMM's SDA files revealed that in some instances supporting information from the agencies, regarding the reason for the delegation, is absent. Some delegations were approved based on telephone conversations or emails. Some files do not contain documentation to verify the approval of original delegations along with subsequent year amendments which authorize the continued use of the SDA. Of the SDA files reviewed, 45 out of 59 (76%) do not contain documentation supporting the issuance and continued use of the respective SDA.

The DPMM does not have policies and procedures in place to insure that every employee documents and files the backup information necessary to show that SDAs are properly requested and authorized. In some instances, DPMM issued an SDA to an agency absent a request from the agency for an SDA. In other instances, an agency phoned or emailed its SDA request to the DPMM and the

information was not copied/documented or filed by the DPMM staff. In still other instances, SDA files were recreated when DPMM could not find the original SDA file.

Oversight's review indicates a minimum of \$148 million (\$107 million is for Alcohol and Drug Abuse contract services) was expended on SDAs for which DPMM lacked proper supporting documentation for the period July 1, 1999, through June 30, 2002. No expenditure data was available for 18 of the 59 SDAs and 16 of the 18 also lacked proper supporting documentation for the delegation of authority.

Proper documentation of the request and approval of an SDA helps insure these delegations are being distributed appropriately and with discretion. Proper documentation also helps insure that state monies are being spent with as much fiscal responsibility as possible.

Recommendation

Oversight recommends the DPMM develop and implement policies and procedures to ensure DPMM staff require agencies to submit a letter along with documentation that supports the need for a special delegation of authority prior to approving the request. Oversight also recommends the DPMM develop and implement policies and procedures to ensure that all information related to the request and approval of SDAs is documented in its respective SDA file.

Comment #7

The DPMM is not properly managing the submission and review of requests for one-time delegations of authority. In addition, prior to November 1, 2001, DPMM did not limit the amount that could be spent by an agency under a one-time delegation of authority.

The DPMM does not keep a file of the requests and justifications provided by agencies for one-time delegations of authority. The DPMM also does not maintain a log of the delegations issued or assign identification numbers to the delegations. Of the 12 one-time delegations approved for the period of this review, no supporting documentation, other than the approval letters issued by DPMM, was available for review.

Prior to November 1, 2001, DPMM did not provide a maximum expenditure amount in its approval letter granting an agency a one-time delegation of authority. This allowed at least one agency to spend at least \$650,000 more than its original estimate. However, beginning with one-time delegation of authority letters dated November 1, 2001, DPMM began advising agencies that their spending was limited and that if the cost was expected to exceed the original amount approved, the agency must contact DPMM before proceeding.

The DPMM does not have policies and procedures in place to ensure that one-time delegations of authority are logged and information is filed to support the departments' requests. In addition, because DPMM did not provide special identification numbers for agencies to use when submitting invoices for payment of goods and services purchased relating to one-time delegations, the DPMM is not able to track expenditures. This condition could allow agencies to exceed original spending estimates, approved by DPMM, unbeknownst to DPMM.

Proper documentation of the request and approval of a one-time delegation of authority helps ensure these delegations are being distributed appropriately and with discretion.

Recommendation

Oversight recommends the DPMM develop policies and procedures to ensure the documentation and approval of one-time delegations of authority. The DPMM should consider implementing a system to log in requests, maintain agency requests and supporting documentation, and issue identification numbers for agencies to use when submitting invoices for vendor payment. Such a system would allow

for easier oversight, monitoring and review of the delegations and their related expenditures, thus ensuring spending limits were followed and agencies adhered to DPMM policies and procedures if original estimates proved too low.

Oversight also recommends the DPMM continue including spending limits in its letters authorizing one-time delegations of authority.

Comment #8

Local delegations of authority, for purchases under \$25,000, were not signed and returned by two state agencies subject to Chapter 34 RSMo requirements for the period July 1, 2001, through March 14, 2002.

Per Section 34.100, RSMo, the Commissioner of the Office of Administration may delegate procurement authority to individual departments. In accepting this delegated authority, a department acknowledges its ability to, and agrees to, fulfill all of the requirements under Chapter 34 in making purchases and entering into contracts and keeping records. The DPMM did not receive signed local delegation of authority (for purchases less than \$25,000) documents from the Departments of Economic Development (DED) and Transportation (DHT) for the delegation issued July 2001. Although DPMM staff sent follow-up emails to DED and DHT on two separate occasions, no additional follow-up was taken to ensure the signed delegations were returned by the agencies.

To quantify the amount purchased using local delegations of authority that were technically invalid, Oversight inquired of DED and DHT about the amount spent on goods and services purchased, directly by their agency, for the period July 1, 2001, through March 14, 2002. DED purchased \$1,455,313 in goods and services and DHT purchased at least \$429,830.

DHT officials believe they are exempt from Chapter 34 RSMo requirements except for data processing, telecommunications, and printing. Therefore, DHT was only able to provide Oversight with the amount spent (\$429,830) on goods and services related to data processing, telecommunications, and printing.

If DPMM continues to let agencies procure goods and

services without proper authority, it risks losing control of procurements.

Recommendation

Oversight recommends the DPMM establish policies and procedures that include aggressive follow-up measures to ensure all departments sign and return local procurement delegations in a timely manner.

Comment #9

Conflicting statutory language, regarding a 10% preference for purchase of recycled products, in two sections of Chapter 34 RSMo should be amended in a manner that will resolve inconsistent language.

In its present form, Section 34.032, RSMo, contains language specifying a 10% preference for recycled product purchases although House Bill 562 eliminated a similar preference in Section 34.031, RSMo, in 1995.

DPMM follows Section 34.031, RSMo, which does not require a 10% preference for recycled product purchases and disregards Section 34.032, RSMo, which still includes the 10% preference.

Recommendation

Oversight recommends the General Assembly pass legislation that will ensure consistency between Section 34.031, RSMo, and Section 34.032, RSMo.

Comment #10

Departments and state agencies are not purchasing a minimum of fifteen percent recycled motor oil for use in motor vehicles as required in Section 34.032.2, RSMo.

Section 34.032.2, RSMo, requires departments and agencies to purchase a minimum of fifteen percent recycled oil to be used in motor vehicles.

According to the DPMM Recycling Coordinator, agencies are not purchasing recycled oil because it is more expensive than virgin oil. For example, the Department of Transportation and the Missouri State Highway Patrol would like to use recycled oil, but its price deters them from using the recycled oil. DPMM's Recycling Coordinator states this is due to the elimination of the 10% price preference for recycled products which was deleted from Section 34.031, RSMo, in 1995.

Although the 10% price preference was deleted from Section 34.031, RSMo, it was not deleted from Section

34.032, RSMo; therefore, departments and state agencies should be purchasing recycled oil pursuant to Section 34.032.2, RSMo.

Recommendation

Oversight recommends the DPMM enforce the requirement for state agencies to purchase recycled oil until or unless the requirement is eliminated from Section 34.032.2, RSMo.

Comment #11

A recycling and waste reduction policy that is required for each department and state agency appears to be in place for the executive branch only.

According to Section 34.032.5, RSMo, each department and state agency as well as the office of the governor and the general assembly is to have in place a policy for recycling and waste reduction. Although a policy appears on the state's recycling website titled Policy For Recycling and Waste Reduction Pursuant to HB 438, 440, 96 & 97 State of Missouri Executive Branch Departments, the policy specifically refers to executive branch departments only.

According to the DPMM Recycling Coordinator, this policy is used by all departments and agencies, but it has never been "formally" adopted. Without a formal policy in place that applies to all state entities, compliance issues could arise.

Recommendation

Oversight recommends the DPMM's recycling policy be formally adopted during a Missouri Interagency Recycling Committee meeting and the title of the policy be changed to reflect application to all departments and agencies.

Comment #12

The General Assembly is not reporting recycling collection and environmentally preferable purchase activity pursuant to Section 34.032.5, RSMo. Recycling containers in the Capitol Building are not being utilized for the purpose intended.

All departments and state agencies with the exception of the General Assembly are reporting recycling collection and environmentally preferable purchase activity to the DPMM Recycling Coordinator. The recycling containers in the Capitol Building are frequently used for food waste by caterers.

Missouri Interagency Recycling Committee (MIRC) members from the Senate and the House of Representatives stated their agencies were not reporting recycling/waste reduction activity because they were not aware of the policies and procedures established by MIRC. The House MIRC member said they send out a letter at the beginning of each legislative session which explains the usage of the recycling containers in the Capitol Building. The House MIRC member stated he was aware the recycling bins are often misused, especially by caterers providing meals in the Capitol. The Senate MIRC member stated he was new to his position and had not learned about MIRC other than that he was on the committee.

Section 34.032.5, RSMo, states, "The office of the governor and the general assembly shall implement a policy for recycling and waste reduction and shall collect and recycle waste paper and aluminum beverage containers generated within its facilities." If the General Assembly does not report its activity to the Recycling Coordinator, there is no way to verify that a policy is being followed.

Recommendation

Oversight recommends the General Assembly (House of Representatives and Senate) report their recycling and waste reduction activity to DPMM's Recycling Coordinator to show support for the State's recycling and waste reduction efforts.

Oversight also recommends the DPMM Recycling Coordinator meet with the MIRC members from the House and Senate to provide training regarding policies and procedures of the recycling program. Oversight notes the DPMM Recycling Coordinator began this process during the program evaluation.

Oversight further recommends the DPMM Recycling

Coordinator work with proper facilities management staff for the Capitol Building to ensure adequate containers for both waste and recycling purposes are available and that the recycling containers in the Capitol are appropriately sized and clearly labeled to indicate their intended purpose.

Comment #13

The DPMM has not transferred excess revenues over costs, of the State Recycling Program, to the Department of Social Services' Heating Assistance Program, as required by Section 34.032.5, RSMo, since fiscal year 1998.

Revenue from the State Recycling Program has exceeded program costs every fiscal year since 1993 with the exception of fiscal year 1999. As required by Section 34.032.5, RSMo, the DPMM transferred \$15,000 to \$20,000 to the Division of Family Services Fund (0610) in fiscal years 1995 through 1998.

As of July 1, 2001, the balance in the recycling fund was \$36,824 and as of July 3, 2002, the balance in the fund was \$40,312. Excess revenues over costs of the recycling program have been retained in the fund with no transfers made to DOS since the last transfer of \$15,000 in fiscal year 1998.

According to DPMM, excess revenues have not been transferred due to concerns with the downward trend of recycling markets and anticipation of increased expenses due to heightened recycling efforts.

Oversight notes the language in Section 34.032.5, RSMo, is vague regarding the timing and frequency of transfers of excess revenues over expenses to DOS.

Recommendation

Oversight realizes the need to retain a reserve for unexpected program costs and lower-than-anticipated revenues; however, the remainder of revenues over expenses should be transferred to DOS pursuant to Section 34.032.5, RSMo, in a timely manner.

Oversight recommends the DPMM transfer a minimum of \$20,000 of the current balance in the recycling program fund to DOS for the Heating Assistance program.

Oversight also recommends the General Assembly pass

legislation that will clarify the language in Section 34.032.5, RSMo, regarding the frequency of transfers of excess revenues to DOS.

Comment #14

Certain statutory language pertaining to the DPMM has become obsolete and should be repealed.

In reviewing the DPMM's compliance with Chapter 34 RSMo, Oversight observed two statutes which appear to be outdated.

Section 34.065, RSMo, adopted in 1957, specifies a rotation basis for possible bidders in the event the number of bidders is so large it is impractical to notify all bidders each time a bid is requested. According to DPMM staff, this requirement is no longer necessary because of the internet and email. DPMM posts bid opportunities on their state website and notifies registered bidders via email.

Section 34.130, RSMo, adopted in 1939 and amended in 1945, requires each department to submit to the commissioner of administration a classified list of its estimated needs for supplies for the following fiscal year. The commissioner of administration shall consolidate these and may purchase the entire amount or such part at one time as he shall deem best. According to DPMM staff, a listing of anticipated needs for the upcoming fiscal year has not been requested during the last twenty years. Statewide contracts and delegations of authority (up to \$25,000) have made this statute requirement obsolete.

Recommendation

Oversight recommends the General Assembly pass legislation that repeals Sections 34.065 and 34.130, RSMo.

Comment #15

Oversight researched "Best Practices" as they relate to purchasing policies and procedures and found ideas for the DPMM's consideration.

To attempt to identify best practices in the procurement arena, Oversight reviewed procurement audits from other states, reviewed the National Association of State Procurement Officials (NASPO) *Survey of State & Local Government Purchasing Practices – 2001*, and searched internet web sites.

In reviewing best practices information from other sources,

it appears DPMM's policies and procedures are in-line with other states. Particularly, DPMM's local delegation of authority amount of \$25,000 appears to be within the norm of other states.

As with any system, however, there are areas that could be improved or enhanced. Possible suggestions for the DPMM to consider include:

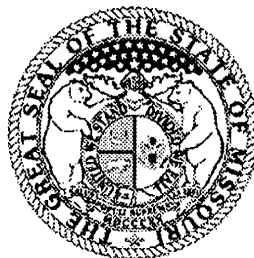
- Single Feasible Source
 - Without the benefits of a competitive award, single feasible source contracts should be monitored more closely than contracts awarded through a competitive process.
 - Single feasible source contracts that are renewed year after year have the potential of continuing for years without the benefit of a competitive procurement process. Policies should be developed that specify a limit on the renewal of sole source contracts. After that time period, a sole source contract should be offered as a competitive award.
 - A detailed questionnaire for single feasible source justification would assist in clarifying the eligibility of single feasible source requisitions.
- Renewals
 - If the contract is a renewal of a contract for the same or similar work, the amount of time that the same person or firm has had the contract should be noted on the central website.
 - Limit the automatic renewals of single feasible source contracts.
- Advertising
 - Advertise the availability of a central procurement website to potential contractors and the general public using major advertising publications.

Recommendation

Oversight recommends the DPMM consider and implement any or all of the best practices listed if the practice is determined to be an appropriate fit for the organization.

APPENDIX

Bob Holden
Governor



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DEC 12 2002

OVERSIGHT DIVISION

Jacquelyn D. White
Commissioner

State of Missouri
OFFICE OF ADMINISTRATION
Post Office Box 809
Jefferson City, Missouri 65102

(573) 751-2387 Fax: (573) 751-9377
TTD: (800) 735-2966 Voice: (800) 735-2466
<http://www.oa.state.mo.us/purch/index.shtml>

James Miluski
Director
Division of Purchasing and
Materials Management

December 12, 2002

Mickey Wilson, CPA
Director
Committee on Legislative Research
Oversight Division
Capitol, Room 132
Jefferson City, Mo 65102

Dear Mr. Wilson,

I am pleased on behalf of the Division of Purchasing and Materials Management, hereinafter referred to as the DPMM, to respond to the Committee on Legislative Research's Report as follows:

Comment #1 – Answer:

The DPMM has incorporated bidder certification requirements regarding good standing with the Secretary of State, Division of Employment Security and the Department of Revenue. Failure to meet this requirement by an awarded vendor shall be cause for breach of contract actions and be and be grounds for termination of the contract.

The DPMM uses the Secretary of State's website to determine if the offeror is in good standing. However, the DPMM will evaluate the additional recommendations made by the Oversight Division relative to its impact on available resources. Listed below is our current Business compliance mandate:

Business Compliance: The bidder certifies by signing the signature page of this original document and any amendment(s) signature page(s) that it and any proposed subcontractors are presently in compliance with all laws governing conducting business in the State of Missouri (state). Failure to comply with this requirement could result in the bid being deemed non-responsive. The bidder shall provide documentation of compliance upon request by DPMM. The compliance to conduct business in the state shall include but is not limited to:

Registration of business name (if applicable)

Certificate of authority to transact business/certificate of good standing (if applicable)

Tax requirements (e.g., city/county/state/federal)

State and local certifications (e.g., professions/occupations/activities)

Licenses and permits (e.g., city/county license, sales permits)

Insurance (e.g., worker's compensation/unemployment compensation)

Comment #2 – Answer:

The Office of Administration and the DPMM will consider this request for an Attorney General Opinion.

Comment #3 – Answer:

Oversight is of the opinion that the DPMM revise their internal procedure regarding advertising and consider using different daily newspapers than currently selected. In addition to those papers selected by this office for advertisement, the DPMM also advertises in various minority publications around Missouri. The intent of the legislation is to reach targeted audiences that theoretically lead to better competition. The DPMM has achieved an advanced competition level by automating its procurement process and advertising all bids on its Internet website. We also provide a vendor registration process that allows e-mail notification of bids issued by the state. It is the opinion of this office that the manner of bidding opportunity advertisement achieves the desired competition level.

Comment #4 – Answer:

Oversight recommends the DPMM strictly enforce their policy on proper SAMII document coding. Each single feasible source, emergency purchase and delegation of authority has been reviewed and approved in accordance with our current procedures. The decisions regarding these documents have not been based upon poor information as noted in the program evaluation.

Agencies have not always entered data as required by SAMII procedures. The DPMM will communicate the importance of following SAMII purchase order document coding to ensure reliable reporting.

Comment #5 – Answer:

No answer required by the DPMM.

Comment #6 – Answer:

Oversight recommends the DPMM develop and implement policies and procedures to ensure staff requires agencies to submit a letter and documentation to support the need for special delegation of authority and maintain documentation in its respective file. The DPMM agreed to the recommendations and enhanced current policies and procedures effective December 2002.

Comment #7 – Answer:

Oversight recommended DPMM develop policies and procedures to ensure the documentation and approval of one-time delegations of authority. The DPMM agreed to the recommendations and enhanced current policies and procedures effective December 2002.

Comment #8 – Answer:

Oversight recommended DPMM implement aggressive follow-up measures to ensure all departments sign and return local procurement delegations in a timely manner. The DPMM agreed to the recommendation and enhance current policies and procedures effective December 2002.

Comment #9 – Answer:

No response required by the DPMM.

Comment #10 – Answer:

Oversight recommended the DPMM enforce the requirement for state agencies to purchase recycled oil. Agencies have been delegated purchase authority up to \$25,000.00. Individual purchases under this amount are not reviewed by the DPMM. Therefore, it is difficult for the DPMM to enforce this requirement. However, the DPMM will continue to advise and educate agencies regarding this requirement. In addition, agency delegation of authority documents will be modified to include this requirement.

Comment #11 – Answer:

The DPMM will present the recommendation made by the Oversight Program to the Missouri Interagency Recycling Committee.

Comment #12 – Answer:

Oversight recommended the DPMM meet with House and Senate Missouri Interagency Recycling Committee members and provide training on the policies and procedures of the recycling program. As stated in the program evaluation, the DPMM Recycling Coordinator began this process during program evaluation.

Comment #13 – Answer:

Oversight recommended a transfer of funds from the Recycling fund to the Division of Family Services Fund. The DPMM agreed and will authorize the transfer of a portion of the Recycling Fund to the Heating Assistance Program as determined in the best interest of the recycling program.

Comment #14 – Answer:

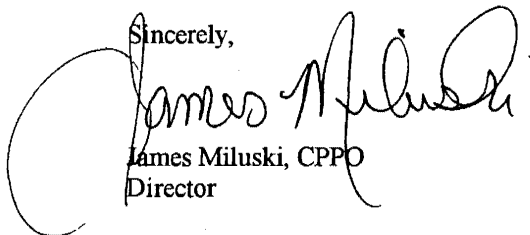
No response required by the DPMM.

Comment #15 – Answer:

The DPMM will review the possible best practice suggestions made by Oversight for incorporation into our policies and procedures.

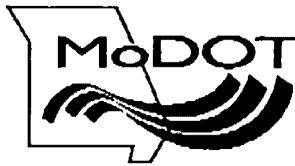
In conclusion, the Division of Purchasing and Materials Management used the review of its program as an opportunity to improve. Our responses prove this point by the enhancement of current policies upon receipt of the recommendations outlined by the Oversight Program. I am available for additional information regarding these comments should it be deemed appropriate.

Sincerely,

A handwritten signature in black ink, appearing to read "James Miluski". The signature is fluid and cursive, with a large loop at the beginning and end.

James Miluski, CPPO
Director

cc: Jacquelyn D. White
Joyce Murphy



MEMORANDUM

Missouri Department of Transportation
Controller's Office
105 West Capitol Avenue

TO: Kimberly Reardon, Legislative Oversight

CC:

FROM: Jim Deresinski, Controller

DATE: December 10, 2002

SUBJECT: Program Evaluation of Division of Purchasing & Materials Management

The Missouri Department of Transportation provides the following response to
Comment #5 of the Division of Purchasing & Materials Management Recommendations:

"We will work with the commissioner of administration and/or their designee to ensure compliance with Section 34.044, RSMo, as it relates to Single Feasible Source procurements and advertising requirements."

